

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 827

Short Title: Require Surety Options for Developers. (Public)

Sponsors: Representative Collins (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT RELATING TO THE FINANCIAL ASSURANCES SPECIFIED BY LOCAL  
3 GOVERNMENTS AS PERFORMANCE GUARANTEES UNDER SUBDIVISION  
4 CONTROL ORDINANCES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 153A-331(c) reads as rewritten:

7 "(c) A subdivision control ordinance may provide that a developer may provide funds to  
8 the county whereby the county may acquire recreational land or areas to serve the development  
9 or subdivision, including the purchase of land that may be used to serve more than one  
10 subdivision or development within the immediate area.

11 The ordinance may provide that in lieu of required street construction, a developer may  
12 provide funds to be used for the development of roads to serve the occupants, residents, or  
13 invitees of the subdivision or development. All funds received by the county under this section  
14 shall be transferred to the municipality to be used solely for the development of roads,  
15 including design, land acquisition, and construction. Any municipality receiving funds from a  
16 county under this section is authorized to expend such funds outside its corporate limits for the  
17 purposes specified in the agreement between the municipality and the county. Any formula  
18 adopted to determine the amount of funds the developer is to pay in lieu of required street  
19 construction shall be based on the trips generated from the subdivision or development. The  
20 ordinance may require a combination of partial payment of funds and partial dedication of  
21 constructed streets when the governing body of the county determines that a combination is in  
22 the best interest of the citizens of the area to be served.

23 The ordinance may provide for the more orderly development of subdivisions by requiring  
24 the construction of community service facilities in accordance with county plans, policies, and  
25 standards. To assure compliance with these and other ordinance requirements, the ordinance  
26 may provide for performance guarantees to assure successful completion of required  
27 improvements. If a performance guarantee is required, the county shall provide a range of  
28 options of types of performance guarantees, including, but not limited to, financial assurances  
29 such as surety bonds ~~or~~ and letters of credit, from which the developer may choose. For any  
30 specific development, the type of performance guarantee from the range specified by the  
31 county shall be at the election of the developer. Whenever a letter of credit is an allowable  
32 mechanism included in the range specified by a county, the developer may elect to obtain a  
33 surety bond guaranteeing performance in lieu of the letter of credit. The county may establish  
34 reasonable requirements regarding the surety, however, any company doing business in this



1 State that is among those listed annually as acceptable sureties on federal bonds in Circular 570  
2 of the U.S. Department of Treasury are deemed acceptable for the purposes of this subsection.

3 The ordinance may provide for the reservation of school sites in accordance with  
4 comprehensive land use plans approved by the board of commissioners or the planning board.  
5 For the authorization to reserve school sites to be effective, the board of commissioners or  
6 planning board, before approving a comprehensive land use plan, shall determine jointly with  
7 the board of education with jurisdiction over the area the specific location and size of each  
8 school site to be reserved, and this information shall appear in the plan. Whenever a  
9 subdivision that includes part or all of a school site to be reserved under the plan is submitted  
10 for approval, the board of commissioners or the planning board shall immediately notify the  
11 board of education. The board of education shall promptly decide whether it still wishes the site  
12 to be reserved and shall notify the board of commissioners or planning board of its decision. If  
13 the board of education does not wish the site to be reserved, no site may be reserved. If the  
14 board of education does wish the site to be reserved, the subdivision may not be approved  
15 without the reservation. The board of education must acquire the site within 18 months after the  
16 date the site is reserved, either by purchase or by exercise of the power of eminent domain. If  
17 the board of education has not purchased the site or begun proceedings to condemn the site  
18 within the 18 months, the subdivider may treat the land as freed of the reservation."

19 **SECTION 1.(b)** G.S. 160A-372(c) reads as rewritten:

20 "(c) The ordinance may provide for the more orderly development of subdivisions by  
21 requiring the construction of community service facilities in accordance with municipal plans,  
22 policies, and standards. To assure compliance with these and other ordinance requirements, the  
23 ordinance may provide for performance guarantees to assure successful completion of required  
24 improvements. If a performance guarantee is required, the city shall provide a range of options  
25 of types of performance guarantees, including, but not limited to, financial assurances such as  
26 surety bonds or and letters of credit, from which the developer may choose. For any specific  
27 development, the type of performance guarantee from the range specified by the city shall be at  
28 the election of the developer. Whenever a letter of credit is an allowable mechanism included in  
29 the range specified by a city, the developer may elect to obtain a surety bond guaranteeing  
30 performance in lieu of the letter of credit. The city may establish reasonable requirements  
31 regarding the surety, however, any company doing business in this State that is among those  
32 listed annually as acceptable sureties on federal bonds in Circular 570 of the U.S. Department  
33 of Treasury are deemed acceptable for the purposes of this subsection.

34 The ordinance may provide for the reservation of school sites in accordance with  
35 comprehensive land use plans approved by the council or the planning board. In order for this  
36 authorization to become effective, before approving such plans the council or planning board  
37 and the board of education with jurisdiction over the area shall jointly determine the specific  
38 location and size of any school sites to be reserved, which information shall appear in the  
39 comprehensive land use plan. Whenever a subdivision is submitted for approval which includes  
40 part or all of a school site to be reserved under the plan, the council or planning board shall  
41 immediately notify the board of education and the board of education shall promptly decide  
42 whether it still wishes the site to be reserved. If the board of education does not wish to reserve  
43 the site, it shall so notify the council or planning board and no site shall be reserved. If the  
44 board of education does wish to reserve the site, the subdivision shall not be approved without  
45 such reservation. The board of education shall then have 18 months beginning on the date of  
46 final approval of the subdivision within which to acquire the site by purchase or by initiating  
47 condemnation proceedings. If the board of education has not purchased or begun proceedings  
48 to condemn the site within 18 months, the subdivider may treat the land as freed of the  
49 reservation.

50 The ordinance may provide that a developer may provide funds to the city whereby the city  
51 may acquire recreational land or areas to serve the development or subdivision, including the

1 purchase of land that may be used to serve more than one subdivision or development within  
2 the immediate area. All funds received by the city pursuant to this paragraph shall be used only  
3 for the acquisition or development of recreation, park, or open space sites. Any formula enacted  
4 to determine the amount of funds that are to be provided under this paragraph shall be based on  
5 the value of the development or subdivision for property tax purposes. The ordinance may  
6 allow a combination or partial payment of funds and partial dedication of land when the  
7 governing body of the city determines that this combination is in the best interests of the  
8 citizens of the area to be served.

9 The ordinance may provide that in lieu of required street construction, a developer may be  
10 required to provide funds that the city may use for the construction of roads to serve the  
11 occupants, residents, or invitees of the subdivision or development and these funds may be used  
12 for roads which serve more than one subdivision or development within the area. All funds  
13 received by the city pursuant to this paragraph shall be used only for development of roads,  
14 including design, land acquisition, and construction. However, a city may undertake these  
15 activities in conjunction with the Department of Transportation under an agreement between  
16 the city and the Department of Transportation. Any formula adopted to determine the amount  
17 of funds the developer is to pay in lieu of required street construction shall be based on the trips  
18 generated from the subdivision or development. The ordinance may require a combination of  
19 partial payment of funds and partial dedication of constructed streets when the governing body  
20 of the city determines that a combination is in the best interests of the citizens of the area to be  
21 served."

22 **SECTION 2.** This act is effective when it becomes law and applies to any range  
23 specified by a county or city on or after that date.